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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-3114

HUGH D. JASCOURT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Appellee.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Washington, D.C. 20036
Attorney for Petitioner

ABE DUPLICATORS, INC.—1732 Eye Street, N.W.—Washington, D.C.—298-8837

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	1
OPINION BELOW	3
JURISDICTION	4
STATEMENT	4
THE WRIT SHOULD ISSUE	8
CONCLUSION	13
APPENDIX A	A-1
APPENDIX B	B-1
APPENDIX C	C-1
APPENDIX D	D-1

TABLE OF AUTHORITIES

Cases:

Federal Crop. Ins. Corp. v. Merrill, 332 U.S. 380 (1947) 8

Fox Valley Engineering v. United States, 151 Ct.Cl. 228 (1960) 11

Maddox Drill, Inc. v. United States, 192 Ct.Cl. 608, 427 F.2d 1233 (1970) 8

Page

New York Mail and Newspaper Trans. Co. v. United States,
139 Ct.Cl. 751,
154 F.Supp. 271 (1957) 9

The State House, Inc. v. United States,
141 Ct.Cl. 51,
157 F.Supp. 853 (1958) 10

Thomson v. United States,
174 Ct.Cl. 780,
357 F.2d 683 (1966) 11

Statute:

Court of Claims; certiorari, certified questions,
28 U.S.C. §1255(1) 4

QUESTIONS PRESENTED

1. Whether or not a contracting party with the United States reasonably relied upon the authority of government officials sufficiently to bind the United States when they ordered him to expend funds on the assurance that such expenditures were necessary to secure a contract renewal and the officials and the contracting party believed such authority existed?

2. Whether or not the United States can shield itself from liability when a contracting party has reasonably relied upon the representations of government officials holding themselves out to have proper authority to bind the government if the officials have induced the party to perform activities the non-performance of which would cause considerable risk in contract renewal and where the officials directed such activities to be performed and accepted the benefits advising the party that the government would be responsible for paying the costs involved?

3. Whether or not the United States may assert that failure of a contracting officer to approve certain expenditures absolves the government of an obligation to pay such expenditures when a government official advises the party that he has the authority to direct the contract officer to approve the expenditures?

IN THE

Supreme Court of the United States

October Term 1975

No.

HUGH D. JASCOURT,
Petitioner,

v.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner, Hugh D. Jascourt, petitions for a writ of certiorari to review the judgment of the United States Court of Claims entered in the above case.

OPINION BELOW

The opinion of the United States Court of Claims on cross motions for summary judgment was not reported (Appendix A).

JURISDICTION

The decision of the United States Court of Claims was entered on May 30, 1975. The jurisdiction of this court is invoked under 28 U.S.C. §1255 (1).

STATEMENT

In December 1971 the United States Department of Labor (hereinafter referred to as "DOL"] through the Director, Division of Public Employees, Labor-Management Services Administration [hereinafter referred to as "Director"] requested Petitioner, Hugh D. Jascourt, to pursue the possibility of establishing a project entitled: "A Planning and Pilot Testing Project for a National Field Study of State and Local Government Relations." In order to establish the appropriate entity to carry forth the project, the Public Employee Relations Research Institute [PERRI], an unincorporated association, was created by Petitioner. PERRI and the National Center for Dispute Settlement, not only with the consent, knowledge, and encouragement of officials of DOL but with the right to approve, entered into Articles of Affiliation for the purpose of meeting the definition of an "appropriate facility and staff" to undertake the project.

On or about June 30, 1972, DOL and the National Center for Dispute Settlement entered into Contract No. L-72-171, styled: "A Planning and Pilot Testing Project for a National Field Study of State and Local Government Relations." [Appendix B] The above mentioned Director became the Contract Officer's Technical Representative under the contract. The contract was based on a proposal formulated by the Petitioner, and the funding by the Govern-

ment was based, in part, on the expertise of Petitioner and his close working relationship with employees of the DOL. PERRI was created by Petitioner to manage the proposed project, and the National Center for Dispute Settlement was named as contractor as a formality. The contract contemplated a two-year project beginning July 30, 1972 and provided funds for the first year. [Appendix B, II]. To ensure continuity in the project, funds for the second year were to be earmarked from the 1972-1973 budget. [Appendix C, para. 7].

During negotiations leading to Contract No. L-72-171, petitioner was informed by representatives of the DOL that his location on Department premises was a prerequisite to funding the project. From June 30, 1972 to July 7, 1973, Petitioner utilized offices and staff of the Division of Public Employees in the Department of Labor. [Appendix C, para. 8].

Before the end of the first year of the project, the Deputy Assistant Secretary for Labor Relations, Planning and Evaluation, and Acting Director of the Office of Labor Management Policy Development, Labor-Management Services Administration, [hereinafter] referred to as "Deputy"] requested the Director to order Petitioner to vacate the DOL premises by the end of the fiscal year due to Department space needs. [Appendix D, para. 5; Appendix C, para. 11].

Petitioner received full assurances in April 1973 and, thereafter, from the Deputy and his subordinate, the Director, that expenditures necessitated by locating the project outside DOL premises would be reimbursed. [Appendix C, para. 12] Further, in the spring of 1973 the Deputy reviewed and approved the second-year contract and re-

quested the Director to so inform Petitioner. [Appendix D, para. 6] Petitioner was also informed near the end of the contract period that he should not become behind on the total work for the two contracts and that the second year funding would be forthcoming. [Appendix C, para. 14]

At all times, not only the Petitioner but the Deputy and his subordinate, the Director, believed they had the binding authority to order the Petitioner to make such expenditures pursuant to the second year funding, approve the second year funding and insure reimbursement to the Petitioner. [Appendix C, para. 12 & 18; Appendix D, para. 6 & 7]

Funds earmarked for the second year of the contract were not released on June 30, 1973, the date originally contemplated when Contract No. L-72-171 was negotiated. Petitioner was assured by the DOL representative referred to above that the delay in releasing the funds was only procedural and that the funds were definitely forthcoming. Petitioner was specifically told to continue the project and was specifically authorized by the Director in July, after the first-year contract had terminated, to take a one-week trip to California in furtherance of the project. [Appendix C, para. 7, 13, 14] Consequently, had Petitioner not continued work under the total two year proposal he would have put the contract renewal in jeopardy. All preparations for the second year of the project were undertaken by the Petitioner with the full knowledge and concurrence of representatives of the DOL including, but not limited to, the Director and the Deputy. Relying on such assurances and repeatedly checking with said representatives that each expenditure made by Petitioner was within the contemplated

budget, Petitioner opened an office, signed a year lease, hired a secretary and a research assistant, obtained furniture and office equipment, including telephones, and purchased insurance and incurred other expenditures as necessary to the independent existence of the project. [Appendix C, para. 12] Petitioner's total personal expenditures, including salaries, were seventeen thousand five hundred thirteen dollars and sixty-three cents ($17,513.63).

On August 7, 1973, thirty-eight (38) days after the original contract terminated, the Assistant Secretary of Labor informed Petitioner by letter that the project would not be financed for the second year.

Reimbursement was refused by Appellee on the ground that although the Deputy, the Director and Petitioner believed the authority existed to order such expenditures, the contract was binding as to delegating such authority only to the Contracting Officer [Appendix B, VI (c)]. Petitioner thereafter filed suit in the United States Court of Claims. The United States and Petitioner filed cross motions for summary judgment. On May 30, 1975 the Court granted the motion for summary judgment filed by the United States, denied the motion of summary judgment for Petitioner and dismissed the petition on the technical ground that the officials that had directed the work of Petitioner and told him that they had the authority to approve the second year contract did not have the actual authority, therefore, they could not bind the government. [Appendix A]

THE WRIT SHOULD ISSUE

It is conceded that when representations are made by an agent of the United States, his representative capacity will not *necessarily* bind the United States if such authority is beyond actual authority. *Federal Crop. Ins. Corp. v. Merrill,* 332 U.S. 380 (1947). However, as the facts of this case demonstrate as affirmed by the affidavits of the government officials [Appendix C and D], it was clearly not unreasonable for Petitioner to rely upon the authority from those under whose direction he undertook the contract; who informed him that they had power to approve the second year contract and, even more dramatically, believed they had such authority in fact.

The United States through its high level civil servants should not be able to hide behind the technical application of the law in such circumstances and, it is respectfully submitted, the law is not that unjust in application in such circumstances.

For example, in *Maddox Drill, Inc. v. United States,* 192 Ct.Cl. 608, 427 F.2d 1233, (1970) an oral interpretation by a U.S. contract officer's technical representative was involved even though the contract specifically stated that all interpretations had to be made by the contracting officer in writing. The Court stated, *inter alia:*

> Plaintiff acted reasonably in discussing the matter with [the technical representative . . .] and in believing after conversation between him and the technical representative that he had correctly interpreted the invitation for bid.
>
> The statements of the technical representative cannot be completely disavowed and repudiated on

> the grounds that he was without the authority to speak for the contracting officer. [427 F.2d at 1243].

The Court allowed petitioner to recover the full cost of doing the extra work the technical representative had told him was not required.

As the affidavits assert herein, not only did the Petitioner believe that the Deputy Assistant Secretary for Labor Relations, Planning and Evaluation, Labor-Management Services Administration[1] had authority to direct Petitioner to vacate DOL offices and thereby incur expenses on the promise of reimbursement, but the Deputy Assistant Secretary himself, the Contract Officer's Technical Representative and his deputy believed such authority existed. [Appendix C, para. 18; Appendix D, para. 7] Further, since the Deputy believed that he had the authority to grant the second-year contract and would so inform the contract officer, in all practicality, how could Petitioner question such authority or, more importantly, have *reason* to question such direction and authorization?

It is respectfully submitted that the instant case provides the classic factual exception to the general rule which has been recognized in various cases. In the case of *New York Mail and Newspaper Trans. Co. v. United States,* 139 Ct.Cl. 751, 154 F.Supp. 271 (1957) a contractor brought suit in *quantum meruit* based on work done for the government under what was determined to be a void contract. The

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[1] Simultaneously, he was from January 1971 to December 1973 Acting Director of the Office of Labor Management Policy and Development, Labor Management Services Administration.

contract was void because the contracting officer had exceeded his authority in awarding the contract by not following the statutorily prescribed procedure respecting bids. The contractor carried government messages within New York City by pneumatic tube and had performed for three of the ten year term when it was cancelled for the convenience of the government. The Court allowed recovery for the Plaintiff despite the fact that the agent of the government had exceeded his authority in awarding the contract.

Similarly, in *The State House, Inc. v. United States,* 141 Ct.Cl. 51, 157 F.Supp. 853 (1958) plaintiff had negotiated with GSA to lease office space to the government. Both plaintiff and GSA fully expected that the lease would be approved, and plaintiff remodeled the building based on that expectation. Prior to the lease being entered into, a congressional committee decided not to authorize GSA to rent the extra office space. The case was an advisory opinion sought by Congress as to the liability, if any, of the government to the Plaintiff. The Court found that the government was *morally* obligated to plaintiff for the difference between the office space rented to the government and subsequently rented to private business.

In the instant case, a similar moral obligation clearly exists as the officials of the United States Government fully expected the contract to be renewed, as they believed the person who had the authority had properly approved it. Consequently, it was believed *by all parties* that proper authority existed to direct and assure Petitioner the repayment of personal funds expended. Clearly, the power and authority of the United States government through its officials should not be permitted to avoid its moral and

equitable obligations to the detriment of individuals when clearly the fault involved is the government's.

In the case of *Fox Valley Engineering v. United States,* 151 Ct. Cl. 228 (1960) Plaintiff entered into contract with the Army Map Service to produce drawings. At the request of the contractor, the government sent a representative to give guidance on the project. The representative was without the authority to change the contract or to reject or accept the drawings. He assured the contractor that the drawings were acceptable and in conformance with the contract specifications. The drawings were later rejected, along with others done in a similar manner. Court again allowed recovery of the extra cost for redoing the drawings. It reasoned that when an official of the contracting agency is not the contracting officer, but has been sent by the contracting officer for the purpose of giving guidance in connection with the contract, the contractor is justified in relying on his representative.

In the instant cause, a second-year contract proposal was submitted for review and decision which is clearly similar to the guidance sought in the *Fox* case, since the same party reviewed the first year contract progress, and indicated he had the authority to spprove the second year contract. Clearly, Petitioner had a justifiable right to rely on such representations.

In the case of *Thomson v. United States,* 174 Ct.Cl. 780, 357 F.2d 683 (1966) a U.S. Attorney contracted with a real estate appraiser to do some work in connection with eminent domain proceedings. The U.S. Attorney had the authority to contract, but subject to the approval of the Attorney General. Upon receiving such approval, the U.S. Attorney decided not to enter into the contract. However,

at the Attorney's urging, the appraiser had already begun work on the project. The Court allowed the appraiser the full amount of the bid. Here plaintiff was specifically encouraged to proceed with certain phases of work. Although this case has the issue of the ultimate authority having been granted [i.e., Attorney General approval], that fact had never been communicated to plaintiff. The real issue is whether plaintiff was reasonably justified in relying on the conduct of the defendant's representatives. Such ultimate authority in the instant case was told to Petitioner to be in the Deputy and, therefore, he clearly was justified in proceeding as directed.

It is respectfully submitted that the instant factual pattern clearly demonstrates the equitable basis for an exception to the general rule that representations made by an agent of the government will not necessarily bind the United States if such representations were beyond the authority of the agent. This case is not the usual pattern where the contractor performs his work outside the four walls of government environment.

– Petitioner was contacted by DOL (through the person who eventually became the Contract Officer's Technical Representative).

– As part of the negotiations Petitioner was to occupy space in the DOL (which eventually was in the office of the Contract Officer's Technical Representative).

– The contract was specifically expected to be two years but funded independently each year.

– Petitioner was requested to vacate the premises to coincide with the second-year funding by the same person who approved the second year contract.

– Not only did Petitioner believe that the Deputy had the authority to approve the second year contract and direct and authorize Petitioner to expend funds, *but* the Deputy himself, the Director which was also the Contract Officer's Technical Representative and his deputy believed such authority existed.

No more logical and justifiable chain of events could be postulated that would provide a clearer exception to the general rule and where principles of equity would demand restitution to Petitioner for personal funds expended at the authorization and direction of the representatives of United States Government. The factual pattern clearly presents a situation where Petitioner could not win. If he refused to do the work and travel requested and refused to move from the DOL premises, he was warned his second phase of the contract might not be funded. Further, Petitioner was assured that there was no financial risk since the Deputy had the power to approve the second year contract and Petitioner would be reimbursed. The fact is, however, when Petitioner went forward as directed then he was denied reimbursement. Clearly, the United States government should not be permitted to shield itself in a cloak of technicality and claim that the Petitioner and, not the government, was at fault.

CONCLUSION

It is respectfully submitted that the United States Court of Claims erred by granting the motion for Summary Judgment filed by the United States as there is ample precedent within the law to establish an exception to the rule that an agent of the United States cannot bind the government

unless he has actual authority and that the party is deemed to have had notice that such officials lacked such authority. If *certiorari* is not granted, Petitioner is denied the opportunity to present his case wherein such exceptions can be clearly related to the facts recited herein. Absent that opportunity the United States government will in fact be allowed its material error to be uncorrected to the material detriment of the Petitioner.

Respectfully submitted,

By _____

STEPHEN S. BOYNTON

1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorney for Petitioner

APPENDIX A

IN THE UNITED STATES COURT OF CLAIMS

No. 180-74

HUGH D. JASCOURT

v.

THE UNITED STATES

Before COWEN, *Chief Judge*, MARKEY, *Chief Judge*[*], and LARAMORE, *Senior Judge*.

ORDER

This case comes before the court on cross motions for summary judgment. Upon consideration thereof and after hearing oral argument, the court finds:

(1) In the Spring of 1973, plaintiff expended his personal funds in reliance on oral statements by representatives of the Department of Labor that he would be reimbursed for such expenditures;

(2) the Deputy Assistant Secretary for Labor Relations, who was also the Acting Director of the Office of Labor Management Policy and Development, Department of Labor, directed his subordinate, who was the Director of the Division of Public Employees, Labor Management Services

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[*] Chief Judge of the United States Court of Customs and Patent Appeals, sitting by designation pursuant to 28 U.S.C. § 293(a).

Administration, to inform plaintiff that a contract with plaintiff had been approved and funded;

(3) the Director of the Division of Public Employees thereafter informed plaintiff that the contract had been approved and he authorized and directed plaintiff to undertake certain expenditures;

(4) although both officials of the Department of Labor believed that the Deputy Assistant Secretary of Labor Relations had the authority to enter into the contract and obligate the Department of Labor to reimburse plaintiff for his financial undertakings, neither of said officials had actual authority to bind the Government by either written or oral contract. Under the regulations then in force, only duly designated contracting officers within the Division of Procurement, Office of Administrative Services of the Department of Labor, had the legal authority to contractually bind the Government, and no contract with plaintiff was executed or approved by an authorized official of the Government.

On the basis of the foregoing, the court concludes that plaintiff has the affirmative burden of showing that the officials on whose statements he relied had the authority to commit the Government and having failed to discharge that burden, plaintiff may not recover. *Housing Corp. of America v. United States,* 199 Ct. Cl. 705, 468 F.2d 922 (1972). Since these officials had no actual authority to bind the Government, plaintiff is not entitled to recover on a showing that he relied on their apparent authority. The regulations were published in the Federal Register, and plaintiff is deemed to have had notice that the officials with whom he dealt lacked contractual authority.

Federal Crop Ins. Corp. v. Merrill, 332 U.S. 380, 384 (1947).

IT IS THEREFORE ORDERED that defendant's motion for summary judgment is granted, plaintiff's cross motion is denied, and plaintiff's petition is dismissed.

BY THE COURT

/s/ Stetson Cowen
Chief Judge

May 30, 1975

APPENDIX B

APPENDIX B

CONTRACT (Proc. Inst. Ident.) NO. L-2-171	3. EFFECTIVE DATE	3. REQUISITION/PURCHASE REQUEST/PROJECT NO.	4. CERTIFIED FOR NATIONAL DEFENSE UNDER DMS REG. 1

ISSUED BY CODE
S. Dept. of Labor, Gfc. of Admin. rvices, Div., of Procurement, Rm. 02, 14th & Constitution Ave., NW shington, D.C. 20210

6. ADMINISTERED BY (If other than Item 5) CODE

7. DELIVERY FOR DESTINATION ☐ OTHER (See below)

CONTRACTOR NAME AND ADDRESS CODE FACILITY CODE

(No., city, county, State, and ZIP code) Natioanl Center for Disputes Settlement
1212 16th Street, N.W.
Washington, D. C. 20036

9. DISCOUNT FOR PROMPT PAYMENT

10. SUBMIT INVOICES (4 copies unless otherwise specified) TO ADDRESS SHOWN IN BLOCK
See Part VII of Schedu

SHIP TO/MARK FOR CODE
ee Part V of the Schedule

12. PAYMENT WILL BE MADE BY CODE
U.S. Treasury Depertment

THIS PROCUREMENT WAS ☐ ADVERTISED, ☒ NEGOTIATED, PURSUANT TO: ☐ 10 U.S.C. 2304 (a) ( ) ☒ 41 U.S.C. 253 h (10)

ACCOUNTING AND APPROPRIATION DATA

2104-1-2-P-230-52111-2573-000 Amount $53,500.00

13. ITEM NO.	14. SUPPLIES/SERVICES	17. QUANTITY	18. UNIT	19. UNIT PRICE	20. AMOUNT
	This contract consists of the following:	No. of Pages			
	Cover Sheet (Standard Form 26)	1			
	Schedule	4			
	General Provisions for Cost Reimbursement Supply/Service Contracts				

TOTAL AMOUNT OF CONTRACT $53,500.00

CONTRACTING OFFICER WILL COMPLETE BLOCK 22 OR 26 AS APPLICABLE

☒ CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return 3 copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)

26 ☐ AWARD (Contractor is not required to sign this document.) Your offer on Solicitation Number ____ including the additions or changes made by you which additions or changes are set forth in full above, is hereby accepted as to the items listed above and on any continuation sheets. This award consummates the contract which consists of the following documents: (a) the Government's solicitation and your offer, and (b) this award/contract. No further contractual document is necessary.

NAME OF CONTRACTOR	27. UNITED STATES OF AMERICA
(Signature of person authorized to sign)	BY (Signature of Contracting Officer)
NAME AND TITLE OF SIGNER (Type or print) / DATE SIGNED: 6/30/72	28. NAME OF CONTRACTING OFFICER (Type or print): J. W. Morava / 29. DATE SIGNED: 6-30-72

05

U.S. GOVERNMENT PRINTING OFFICE: 1967 O—250 000

POOR COPY

Contract Schedule

I. Scope of Work

The Contractor will provide an appropriate facility and staff to undertake the planning and pilot testing phases of a project for a national field study of State and local government labor relations.

The project will address itself to a prime policy need of the Department: developing the documentation on the legislative and public sector bargaining histories of the various States and localities, the conceptual framework, methodology, and field survey instruments to ascertain the actual results which have occurred within the various patterns of State and local government labor relations laws and practices. After these objectives have been accomplished, a full scale pilot test on the design of the field survey and its data collection instruments will be made on a comparative basis in the states of Michigan and California. The analysis of the results from these pilot surveys of Michigan and California will indicate whether the field survey design and its instruments are valid and feasible for use in a national field study of public sector labor relations.

Work shall be performed in accordance with the Contractor's technical proposal to the Department of Labor which is herein incorporated by reference.

II. Period of Performance

Work under this project is expected to be completed within two years of the effective date of the contract. This contract is funded for the first year of the project.

III. Reports to be Furnished and Delivery Time

Item 1 — Progress Reports — to be submitted upon the completion of each of the 12 phases outlined in the technical proposal.

Item 2 — Final Report — to be submitted upon completion of the project.

IV. Contracting Officer's Technical Representatives

The Contracting Officer's Technical Representative is Mr. Jerome T. Barrett, Director, Division of Public Employee Labor Relations, LMSA. He is authorized to review and recommend approval of:

a. Technical matters not involving a change in the scope, price, terms or conditions of this contract.

IV. Contracting Officer's Technical Representative (cont.)

b. Progress reports.

c. Inspection and acceptance of supplies/services.

d. Invoices.

He is not authorized to sign any contractual instruments or direct any action that results in a change in the scope, price, terms or conditions of this contract.

V. Delivery Point

All items under this contract will be delivered on or before their due dates to the Contracting Officer's Technical Representative.

VI. Compensation

A. The total cost of the Government for the performance of this contract shall not exceed $53,500.00. The Contractor agrees to use its best efforts to perform all work and obligations under this contract within the total cost set herein, subject to the clause of the General Provisions entitled "Limitation of Cost."

B. For the performance of this contract, the Government shall reimburse the Contractor the cost thereof (hereinafter referred to as "Allowable Cost and Payment" and the provisions below:

1. Purchase Orders and Subcontracts

a. The following shall require prior written approval of the Contracting Officer;

(1) purchase or rental of items of nonexpendable property having unit value exceeding $100.00 (For the purpose of this contract, nonexpendable property means property or equipment having a normal life expectancy of one year or more.) and

(2) purchase orders or subcontracts for any of the work contemplated under this contract exceeding $1,000.00.

b. The Contractor shall give advance notification to the Contracting Officer of all proposed purchase orders or subcontracts which require approval in accordance with the clause of the General Provisions entitled

VI. Compensation (cont.)

"Subcontracts." The advance notification shall include:

(1) a description of the supplies or services to be called for by the subcontract;

(2) identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of completion obtained;

(3) the proposed subcontract price, together with the Contractor's cost or price analysis thereof; and

(4) identification of the type of subcontract to be used.

2. Consultants

a. Any fee or other payments to consultants in excess of $100./day requires prior written authorization by the Contracting Officer.

3. Salaries and Wages

a. Salaries and wages of employees directly employed in performing the work required by this contract.

b. Actual cost of fringe benefits.

4. Travel

Travel and subsistence expenses exclusively in direct performance of this contract.

a. The Contractor shall be reimbursed for actual transportation costs and travel allowances (per diem) of personnel, authorized to travel under this contract, in accordance with established policy of the Contractor. Such transportation cost shall not be reimbursed in an amount greater than the cost of first class rail or of economy air travel, unless economy air travel and economy air travel space are not available and the Contractor certifies to the facts in the voucher or other documents submitted for reimbursement. Travel allowances (per diem) shall be reimbursed in accordance with the Contractor's established policy, but in no event shall such allowances exceed $30.00 per day.

Contract No. L-72-171
Page 4 of 4

VI. Compensation (cont.)

b. The Contractor shall be reimbursed for the cost of travel performed by its personnel in their privately-owned automobiles at the rate of 10¢ per mile not to exceed the cost by the most direct economy air route between the points so traveled. If more than one person travels in such an automobile, no additional charge will be made by the Contractor for such travel.

5. Overtime

a. Overtime, shift or other incentive premium requires prior written authorization by the Contracting Officer.

5. Indirect Costs

a. Indirect costs shall be determined in accordance with clause 6 of the General Provisions of this contract.

Meanwhile, indirect costs under this contract shall be provisionally reimbursed in an amount equal to 20% of total direct salaries and wages.

C. Except as herein above authorized, the Contractor shall not incur costs unless the prior written authorization of the Contracting Officer has been obtained as required herein. Incurrence with the intent of claiming reimbursement as direct costs shall therefore be at the Contractor's own risk, when without such prior authorization.

VII. Submission of Invoices and Place of Payment

Once each month the Contractor may submit to the Government an invoice for the allowable cost to the Contractor for the performance of work hereunder. The Government shall make provisional payment of all invoices submitted hereunder pending the completion of a final audit of the Contractor's cost records. Invoices (original and copies) shall be fowarded to:

Contracting Officer
Division of Procurement
Office of Administrative Services (Room 7102)
U.S. Department of Labor
14th and Constitution Avenue, N.W.
Washington, D.C. 20210

APPENDIX C

UNITED STATES COURT OF CLAIMS

HUGH D. JASCOURT,	)	
Plaintiff	)	
v.	)	**No. 180-74**
	)	
UNITED STATES	)	
Defendant	)	

AFFIDAVIT OF JEROME T. BARRETT

I, Jerome T. Barrett, being first duly sworn on oath, depose and say:

1) that I was employed by the United States Department of Labor as Director, Division of Public Employees, Labor-Management Services Administration, from August 1970 to August 1973;

2) that in December 1971 I requested Hugh D. Jascourt to pursue the possibility of establishing a contractual relationship with the Department of Labor for a project entitled "A Planning and Pilot Testing Project for a National Field Study of State and Local Government Relations";

3) that in order to establish the appropriate entity to carry forth the project, Mr. Jascourt created the Public Employees Relations Research Institute [PERRI] an unincorporated association;

4) that the National Center for Dispute Settlement and PERRI with the consent, knowledge and encouragement of officials of the Department of Labor, including me, entered into Articles of Affiliation for the purposes of meeting the definition of the Department of Labor of an

"appropriate facility and staff" to undertake the proposed project;

5) that on June 30, 1972, the United States Department of Labor, Office of Administrative Services, entered into a contract with the National Center for Dispute Settlement for undertaking the aforementioned project under contract number L-72-171 and it was at all times being understood that Hugh D. Jascourt would undertake the work of the contract;

6) that under the contract I was designated the Contracting Officer's Technical Representative;

7) that Hugh D. Jascourt was informed by me and my deputy director, Gil Donohue, that even though the contract was to be for one year with a renewal anticipated, it was the intention of the U.S. Department of Labor to use 1972-1973 monies for the second-year contract;

8) that Hugh D. Jascourt from June 30, 1972 and until July 7, 1973 utilized offices and staff located in the offices of the Division of Public Employees, U.S. Department of Labor; and that Mr. Jascourt was informed that his location on the premises of the Department of Labor was prerequisite to funding the project;

9) that in the Spring of 1973, the second year proposal was prepared by Hugh D. Jascourt and was subsequently approved by Frank M. Kleiler, Deputy Assistant Secretary for Labor Relations, Planning and Evaluation, and Acting Director of the Office of Labor Management, Policy and Development, Labor Management Services Administration;

10) that Frank M. Kleiler informed me that he had approved the second-year contract and that I was to inform

Hugh D. Jascourt, and I did so;

11) that I was informed by Frank M. Kleiler to direct Hugh D. Jascourt to move from the premises of the Department of Labor by the end of the 1972-1973 fiscal year;

12) that Hugh D. Jascourt received assurances from me, my deputy, Gil Donohue, and through me from Frank Kleiler that the expenditures necessitated by relocating the project staff outside the Department of Labor would be reimbursed by the Department including the signing of a lease, hiring of a secretary and research assistant, office furniture and equipment and related expenses and, in fact, the secretary, Joyce Hanula, hired by Hugh D. Jascourt, actually did work for me prior to relocation;

13) that in July, 1973, I authorized and directed Hugh D. Jascourt to undertake expenditures including trips pursuant to the project of the second year contract to California and Michigan and that Mr. Jascourt undertook the trip to California at his own expense;

14) that I am aware that Gil Donohue, by my direction, advised Hugh D. Jascourt three days before the end of the fiscal year 1972-1973 that he should not become behind on the contract and to actively continue even though the second year funding would now be forthcoming from the 1973-1974 funds rather than the 1972-1973 funds as originally anticipated and that at that time there was no change indicated from the U.S. Department of Labor intention to fund the second year, and that I confirmed this information with Hugh D. Jascourt;

15) that I was informed of all anticipated expenditures

needed to be undertaken pursuant to relocation and I was aware of the monies so spent;

16) that I advised Hugh D. Jascourt that it would be appropriate if he disaffiliated with the National Center for Dispute Settlement on the basis that the second year's contract could be awarded to the Public Employees Relations Research Institute;

17) that it was not until August 7, 1973 that I was informed that there would be no new contract awarded pursuant to a letter written by Paul J. Fasser, Assistant Secretary of Labor, to Hugh D. Jascourt;

18) that at all times I believed that my superior, Frank M. Kleiler, had the authority to authorize and bind the Department for financial undertakings of the Plaintiff and communicated such belief to Hugh D. Jascourt.

2-6-75
Date

/s/ Jerome T. Barrett
Jerome T. Barrett

Subscribed and sworn to before me this 6th day of February, 1975 in Washington, D.C.

/s/ Rovanna R. Johnson
Notary Public

My Commission expires December 14, 1978.

APPENDIX D

UNITED STATES COURT OF CLAIMS

HUGH D. JASCOURT, *Plaintiff*	)	
v.	)	**No. 180-74**
UNITED STATES, *Defendant*	)	

AFFIDAVIT OF FRANK M. KLEILER

I, Frank M. Kleiler, being first duly sworn on oath, depose and say:

1) that I was employed by the United States Department of Labor as Deputy Assistant Secretary of Labor Relations, Planning and Evaluation, from July, 1970 to December, 1973 and was Acting Director of the Office of Labor Management Policy and Development, Labor-Management Services Administration, January, 1971 to December, 1973;

2) that in that capacity I was familiar with a contract entered into between the National Center for Dispute Settlement and the United States Department of Labor, under Contract No. L-72-171 and, that, although the contract was for one year, it was contemplated for a two-year term;

3) that I was aware that Hugh D. Jascourt was to be the principal person involved in the contract even through the contract was to the National Center for Dispute Settlement;

4) that I became aware after the contract was signed that Hugh D. Jascourt was conducting work under the contract

on the premises of the Department of Labor, Division of Public Employees, Labor-Management Services Administration;

5) that I requested my subordinate, Jerome T. Barrett, Director, Division of Public Employees, Labor Management Services Administration, to inform Hugh D. Jascourt that he must relocate his work under the contract off the premises of the Department of Labor for work to be undertaken under the second year of the contract;

6) that I reviewed the progress of the contract and approved the second year proposal in the spring of 1973 and concluded that the second year of the contract should be undertaken and communicated that decision to my subordinate, Jerome T. Barrett, who was then Director, Division of Public Employee Relations, Labor-Management Administration, U.S. Department of Labor, in order that he communicate that information to Hugh D. Jascourt;

7) that I believed that I had the binding authority to approve the second year funding and authorize the contract to be undertaken and in that regard anticipated work to be so undertaken.

February 6, 1975 — Date

/s/ Frank M. Kleiler
Frank M. Kleiler

Subscribed and sworn to before me this 6th day of February, 1975 in Washington, D.C.

/s/ Kay Edmister
Notary Public

My Commission expires January 14, 1979

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-311

HUGH D. JASCOURT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner seeks reimbursement for moneys spent allegedly in reliance on oral statements by government officials who lacked legal authority to contract on behalf of the United States.

On June 30, 1972, the United States Department of Labor contracted with the National Center for Dispute Settlement ("NCDS") for a research project involving the study of state and local government labor relations. The contract was expected to be

completed within two years but was initially funded only for the first year (Pet. 4-5). The contract was managed through the Public Employment Relations Research Institute, an affiliate of NCDS, which was established and directed by petitioner (Pet. App. C-1 to C-2).

On August 7, 1973, the Department of Labor advised petitioner that it had decided not to fund the project for a second year. All outstanding invoices for expenses incurred during the first year were paid, and NCDS has made no further requests for payment.

Petitioner thereafter filed this action in the Court of Claims seeking recovery of $17,513.63 from the United States. He alleged that he had personally expended these funds in order to continue the NCDS research project for a second year, in reliance upon statements made in the spring of 1973 by officials of the Department of Labor who had assured him that the project would be continued for a second year (Pet. 5-7). The Court of Claims granted summary judgment for the United States and dismissed the action on the ground that neither of the officials who allegedly gave assurances to petitioner "had actual authority to bind the Government by either written or oral contract" (Pet. App. A-2). The court concluded that under pertinent Department of Labor regulations, only duly designated contracting officers had "legal authority to contractually bind the Government, and no contract with plaintiff was executed

or approved by an authorized official of the Government" (*ibid.*). The court further found that these regulations were published in the Federal Register, and that plaintiff was deemed to have had legal notice that the officials with whom he dealt lacked authority to contract on behalf of the United States (*ibid.*).

Petitioner does not challenge the findings of the court below that the Department of Labor officials upon whose oral statements he allegedly relied had no legal authority to bind the United States contractually (Pet. 8),[1] and that no contract for the second year of the project had been executed or approved by an authorized government official. As a necessary concomitant of the doctrine of sovereign immunity, "[a] person negotiating with an officer or agent of the Government must inform himself regarding the authority of such individual, since an officer of the Government cannot bind the Government with respect to matters beyond the limit of his authority." *Max Drill, Inc.* v. *United States*, 427 F. 2d 1233, 1243 (Ct. Cl.). Since the officers with whom petitioner dealt lacked authority, the Court of Claims correctly dismissed petitioner's claim.

Moreover, this is not a case in which it may be said that the private party was misled as to the authority of the official with whom he dealt. Depart-

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[1] The burden of proving that those officials had authority to commit the government rested on petitioner (Pet. App. A-2). *Housing Corporation of America* v. *United States*, 468 F.2d 922, 925 (Ct. Cl.).

ment of Labor regulations expressly provide that only duly designated contracting officers have legal authority to bind the United States. 41 C.F.R. 29-1.401(b)(4)(i). Petitioner therefore was on notice that the officials with whom he dealt, who were not designated contracting officers, lacked authority. See *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 384-385. Therefore, even his good faith belief in the authority of the employees who allegedly purported to bind the United States (Pet. App. A-2), or their own misconception of the scope of their authority,[2] would not subject the government to liability. 332 U.S. at 383-384.

The agents' lack of authority to bind the United States in contract distinguishes the instant case from the authorities upon which petitioner relies.[3]

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[2] To the extent that petitioner's claim sounds in tort, rather than contract, it is barred by the misrepresentation exception to the Federal Tort Claims Act, 28 U.S.C. 2680(h), which precludes recovery on claims arising out of negligent, as well as willful misrepresentation. *United States* v. *Neustadt*, 366 U.S. 696, 702. Contrary to petitioner's assertion (Pet. 10), the United States cannot be held liable solely on the basis of "equitable considerations", where no legally binding contract exists. *United States* v. *Minnesota Mutual Investment Co.*, 271 U.S. 212, 217.

[3] The authority of the government agent to contract was not at issue in *Thomson* v. *United States*, 357 F.2d 683 (Ct. Cl.), *State House, Inc.* v. *United States*, 157 F. Supp. 853 (Ct. Cl.), and *New York Mail & Transportation Co.* v. *United States*, 154 F. Supp. 271 (Ct. Cl.). The other cases cited by petitioner concern the government's liability for ad-

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1975.

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ditional work performed under a valid contract at the instruction of an authorized representative of its contracting officer. *Max Drill, Inc.* v. *United States,* 427 F.2d 1233 (Ct. Cl.); *Fox Valley Engineering, Inc.* v. *United States,* 151 Ct. Cl. 228.

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